

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-131442-07

Date:

November 06, 2007

LEGEND:

Foreign Parent =

Foreign Sub =

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Business =

Accounting Firm =

Dear :

This letter responds to your request for a ruling, dated July 9, 2007, submitted by your authorized representative, requesting a determination, under Treas. Reg. §1.1502-75(b)(2), that Sub 1 through Sub 17 (collectively, “the Subsidiaries”) have each joined in the making of the initial consolidated return filed by Parent for the taxable year ending

Date 3. The information submitted in that request and in later correspondence is summarized below.

SUMMARY OF FACTS

Parent is a holding corporation incorporated on Date1 by Foreign Sub, a wholly-owned subsidiary of Foreign Parent. Parent is indirectly engaged in Business through its subsidiaries.

On Date 2, Parent acquired all of the stock of Sub 1 (and indirectly, the stock of Sub 2 through Sub 17) from an unrelated party. Parent made an election under section 338(h)(10) of the Internal Revenue Code with respect to this stock acquisition.

Parent and Subsidiaries retained Accounting Firm to prepare its tax return for the taxable year ending Date 3, and informed Accounting Firm that they intended to file a consolidated return with Parent as the common parent. On Date 4, Parent timely filed a return for the taxable year ending Date 3. The return included the income and deductions of Parent for its entire taxable year beginning on Date 1, and the income and deductions of each of the Subsidiaries for the period during which they were members of the Parent group. The return also included a Form 851 (Affiliations Schedule) that identified each of the Subsidiaries.

On or about Date 5, Accounting Firm noticed that Form 1122 (Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Return) for each of the Subsidiaries was inadvertently not filed with the return for the taxable year ending Date 3. The statute of limitations under section 6501(a) has not expired for the return filed for the taxable year ending Date 3.

REPRESENTATIONS

The taxpayers have made the representations set forth below.

- (a) Except for the failure to timely file Forms 1122, Parent and the Subsidiaries were eligible to file a consolidated U.S. corporation income tax return for the taxable year ending Date 3.
- (b) The income and deductions of each of the Subsidiaries for the taxable year ending Date 3, and all taxable years thereafter, were included in the returns filed by Parent as the parent of the consolidated group.
- (c) None of the Subsidiaries filed separate income tax returns for the taxable year ending Date 3, or for any taxable years thereafter.

- (d) The Subsidiaries were each included in the Affiliations Schedule, Form 851, attached to the return for the taxable year ending Date 3, and for all taxable years thereafter.
- (e) The failure to file Forms 1122 with Parent's return for the taxable year ending Date 3 was inadvertent. Parent and each of the Subsidiaries always fully intended to make the elections with their return. Parent and the Subsidiaries relied on qualified tax professionals to prepare the return for the taxable year ending Date 3.

APPLICABLE LAW

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with §1.1502-75(b).

Section 1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns.

With regard to the consent of a corporation for a group's first consolidated year, §1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year and that a corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in §1.1502-75(h)(2).

Section 1.1502-75(h)(2) now refers to temporary regulation §1.1502-75T(h)(2) which provides that if, under the provisions of §1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. This regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was

filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner, under the facts and circumstances, determines that the member has joined in the making of the consolidated return, such member will be treated for purposes of §1.1502-75(h)(2) as if it had filed a Form 1122 for such year. Section 1.1502-75(b)(2), flush language.

RULING

Based solely on the information submitted and the representations made, we rule that each of the Subsidiaries is treated under §1.1502-75(h)(2) as if it had filed a Form 1122 with the consolidated return of the Parent consolidated group for the taxable year ending Date 3.

CAVEATS

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling. In particular, we express no opinion regarding whether Parent was eligible to make an election under section 338(h)(10) of the Code with respect to its acquisition of Sub 1 stock or the tax treatment of such acquisition.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Under a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Frances Kelly
Assistant to the Branch Chief, Branch 2
(Corporate)